

HOSTETTER KNAPP, LLP
Attorneys at Law
203 E. Main St./P.O. Box 400
Enterprise, OR 97828
Tel: (541) 426-4584
Fax: (541) 426-3281
hklaw@eoni.com

Of Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JOSEPHINE

ART ROBINSON,
Plaintiff,

v.

PETER DEFAZIO, JOHN DOES 1, 2, and 3,
Defendants.

Case No. _____

COMPLAINT (Appropriation of
Likeness; Placing Plaintiff in
False Light)

NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiff alleges:

1.

Plaintiff Art Robinson, PhD, is the Republican and Constitution Party candidate for election in 2012 to the United States House of Representatives from Oregon Congressional District No. 4 (hereinafter "the District").

2.

Defendant Peter DeFazio is plaintiff's principle opponent in the election, and is the current holder of that office.

3.

Defendants John Doe 1, 2, and 3 are unknown to plaintiff and are persons or entities associated with the election campaign of defendant Peter DeFazio.

4.

Plaintiff and defendant were candidates for the same office in the election of 2010. As in 2010, the 2012 election is a close race and is expected to be decided by a small percentage of the vote.

5.

Defendant's primary campaign strategy in 2010, and again in 2012, has been to falsely depict plaintiff as a "pathological" "nut job", who lives and works in a "survivalist compound" (defendant's words). In furtherance of that campaign strategy, defendant has developed and implemented a plan and scheme to falsely depict plaintiff as a candidate who has paid for billboards and other publications seeking to convey to voters of the District messages and beliefs that plaintiff does not espouse in his congressional candidacy, but are messages and beliefs that defendant has correctly concluded will prove to be unpopular political positions and will, if falsely attributed to plaintiff, cause many voters to vote against plaintiff.

6.

Plaintiff is a widely respected scientist in medical and biochemical research and an award-winning educator. He is also a prolific writer and contributor to the national discourse in subjects that are important in human affairs including, but not limited to, scientific, educational, and medical topics.

7.

On information and belief, defendant has searched through plaintiff's writings and publications from the past two decades with the purpose of finding and publishing sentences, half-sentences, and partial ideas that, when taken out of context, serve to further the false portrayal of plaintiff as the person described in paragraph 5 above. To these, defendant has also added completely fabricated statements and attributed them to plaintiff when it serves defendant's purposes.

8.

In the 2010 election, in furtherance of defendant's campaign strategy and scheme described above, defendant rented a large billboard sign along Interstate 5 in the District upon which defendant displayed a picture of plaintiff and designed to look like a campaign advertisement by the plaintiff, with the message "Energy Company CEO's Shouldn't Pay Taxes". Plaintiff has never made any such statement. The disclaimer required by federal law to be placed on such publications (for example, PAID FOR BY DEFAZIO FOR CONGRESS), was intentionally printed with a type size, style, and color that would not be readable by motorists as they drove by the billboard. On information and belief, defendant's objective in renting the billboard and in publishing the likeness of plaintiff in conjunction with the false written message was to deceive the voters of the District and to falsely depict plaintiff as seeking to advertise to voters plaintiff's "crazy" idea (fabricated by defendant) that CEOs of energy companies should not pay taxes. Set out below is a true copy of the billboard paid for by defendant:



9.

In the 2010 election, and in furtherance of defendant's campaign plan and schemes described above, defendant published numerous advertisements on the internet containing plaintiff's picture and giving the false appearance that the advertisements were published by plaintiff, and then linking to content produced by defendant and damaging to plaintiff.

10.

In 2012 and continuing to the present, and in furtherance of defendant's campaign strategy and scheme set out above, defendant posted a video political advertisement on the internet, in which defendant quotes plaintiff saying "I don't have definitive proof" but fails to include the plaintiff's following statement "Basically, I know what happened. I cannot tell you the motives of the people doing it." Defendant falsely implies in the advertisement that plaintiff stated he had no proof that the referenced actions took place at all.

11.

In 2012 and continuing to the present and in furtherance of defendant's campaign strategy and scheme set out above, defendant posted a cartoon political advertisement on the internet falsely attributing to plaintiff the statement "Social Security was only created because people got tired of seeing senior citizens selling pencils on the corner". The reference in the cartoon, when checked, reveals that the referenced statement was not made by the plaintiff. Instead, defendant's reference was to a newspaper which reported that people in the 1930s "got tired of seeing senior citizens selling pencils on the corner" with the quote attributed to the defendant himself. Remarkably, Defendant quoted himself out of context and attributed the quote to the plaintiff. In defendant's cartoon, this demeaning quote is accompanied by a depiction of the plaintiff running over senior citizens while driving a streetcar, with their pencils tossed in the air.

12.

In October 2012, defendant rented at least seven billboards located within the District - - two in or near Roseburg, Oregon, one in or near Sutherlin, Oregon, one in or near Coos Bay, Oregon, and three in or near Corvallis, Oregon. The billboards rented and published by defendant display a likeness of plaintiff with the objective to deceive voters of the District into believing that plaintiff is renting and promoting the billboards in order to inform voters of the District that plaintiff, if elected, will promote and pursue political positions that defendant has determined will be unpopular political positions and will cause voters to vote against plaintiff, all which falsely state the positions espoused by plaintiff, to wit:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- If elected, plaintiff will seek to close all public schools
- If elected, plaintiff will seek to end all social security programs
- If elected, plaintiff will seek to end all federal student aid programs

Plaintiff's true positions and policies regarding these and other issues are described in detail in plaintiff's book Common Sense in 2012, which defendant represents that he has read, and in numerous other venues with which defendant is closely familiar.

13.

Set out below is a true copy of a billboard currently displayed in or near Roseburg, Oregon and paid for by defendant:



HOSTETTER KNAPP, LLP
Attorneys at Law
203 E. Main Street, P.O. Box 400
Enterprise, OR 97828
(541) 426-4584

14.

Set out below is a true copy of a billboard currently displayed in or near Roseburg, Oregon and paid for by defendant:



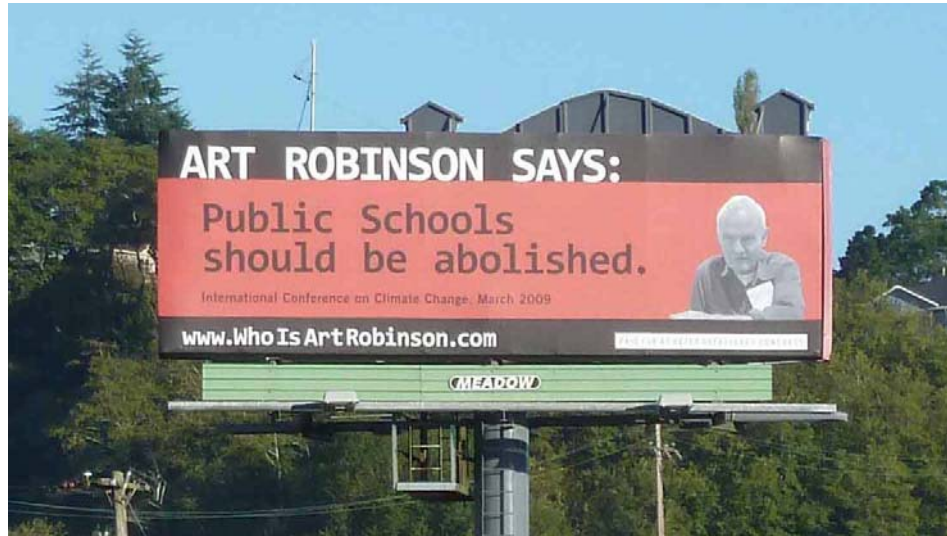
15.

Set out below is a true copy of a billboard currently displayed in or near Sutherlin, Oregon and paid for by defendant:



16.

Set out below is a true copy of a billboard currently displayed in or near Coos Bay, Oregon and paid for by defendant:



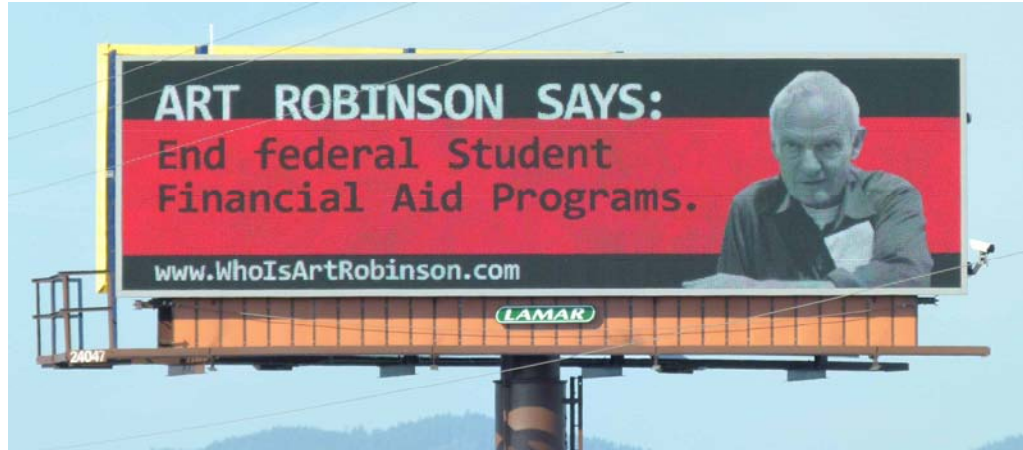
17.

Set out below is a true copy of a billboard currently displayed in or near Corvallis, Oregon and paid for by defendant:



18.

Set out below is a true copy of a billboard currently displayed in or near Corvallis, Oregon and paid for by defendant:



19.

All of the billboards and publications described and shown in paragraphs 8 and 12 through 18 above violate 2 U.S.C. 441d and 11 CFR 110.11. Three of the billboards fail to display any disclaimer required by federal law, and four of the billboards include a disclaimer that is printed in a size and style that is unreadable by passing motorists. The purpose of these laws is specifically to avoid misattributions as intentionally and knowingly made by defendant.

20.

One billboard published in October 2012, and located in or near Corvallis, Oregon, and along the primary road to the campus of Oregon State University (OSU), displays a likeness of plaintiff and publishes the message that OSU is a "liberal socialist stronghold". Defendant rented, created, and published that billboard in furtherance of defendant's campaign plan and strategy set out above, and with the intention to deceive the voters of the District and, in particular the students, faculty, and administrators of OSU into believing that plaintiff would pay for and publish an advertisement with such content near OSU, an action expected to be highly offensive even to those who might agree with the

1 message. The billboard described in this paragraph contains no disclaimer whatsoever, and is published
2 by defendant in violation of federal election law. Set out below is a true copy of the billboard paid for by
3 defendant:



11
12 21.

13 On information and belief, defendant's posting and publication of the billboards was timed by
14 defendant close to the election in order to assure that plaintiff would not have sufficient time to file and
15 adjudicate the matter with the Federal Election Commission before the voting in the District was
16 commenced.

17 22.

18 Polls conducted by plaintiff show that 33% of voters in the District who have read the billboards
19 believe that the billboards were paid for and promoted by plaintiff, and that 20% of the voters are
20 uncertain. These polls also show that the billboards cause a large shift in voter sentiment away from
21 plaintiff and toward defendant and that this shift is reversed when these voters are informed that the
22 billboards were actually paid for and published by defendant. The poll-demonstrated effects are so
23 substantial that it is probable that the misperception by voters that these billboards were paid for and
24 published by plaintiff will markedly effect the outcome of the election.

25
26 23.

1 Prior to September 2012, plaintiff sent to defendant on three occasions plaintiff's book entitled
2 Common Sense in 2012, which includes a chapter containing detailed responses correcting many of
3 defendant's false claims in 2010, including objections to defendant's practice of violating federal election
4 laws as set out above. Specifically, on page 47 of this book, plaintiff described and objected to
5 defendant's billboard described in paragraph 8 above. Defendant acknowledged receipt of those books
6 from plaintiff and responded by letter indicating that he had read plaintiff's book.

7
8 **FIRST CLAIM FOR RELIEF**

9 **(Appropriation of Likeness)**

10 24.

11 Plaintiff realleges the allegations set out in paragraphs 1-23 above.

12
13 25.

14 Defendant has appropriated to his own use and benefit the likeness and identity of plaintiff.

15 26.

16 As a result of defendant's actions as set out above, plaintiff will suffer future economic damages
17 exceeding \$1,000,000.00, and noneconomic damages in an amount to be proven at trial.

18
19 **SECOND CLAIM FOR RELIEF**

20 **(Placing Plaintiff in False Light)**

21 27.

22 Plaintiff realleges the allegations set out In paragraphs 1-26 above.

23 28.

24 Defendant's actions as set out above have placed plaintiff before the public in a false light in a
25 manner that is highly offensive to plaintiff (and would be to any reasonable person in plaintiff's position).

29.

Defendant acted intentionally, with knowledge of, or with reckless disregard of the falsity of the publicized matter and of the false light in which defendant placed plaintiff.

30.

As a result of defendant's actions, plaintiff will suffer future economic damages exceeding \$1,000,000.00, and noneconomic damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Injunction)

31.

Plaintiff realleges the allegations set out in paragraphs 1-30 above.

32.

Defendant's actions and activities described above are ongoing and the damages suffered by plaintiff are continuing to accrue. Defendant should be enjoined by the court from continuing defendant's tortious conduct.

WHEREFORE, plaintiff prays for judgment of this court enjoining defendants from continuing defendants' tortious conduct, awarding damages to plaintiff as set out above, awarding to plaintiff costs and disbursements incurred herein, and awarding other equitable relief that this court deems appropriate.

DATED this 18th day of October, 2012.

D. Zachary Hostetter, OSB # 100541
Of Attorneys for Plaintiff